[Release No. 34–35955; File No. SR–NASD–95–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Gross Assessments

July 11, 1995.

On May 23, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends Section 1 to Schedule A of the NASD By-Laws to clarify gross income filing requirements to include all revenue and to require all members to report revenue on a calendar year basis.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 35795, June 1, 1995).[3] No comment letters were received. The Commission is approving the proposed rule change.

I. Background

Recently, the NASD amended Section 5 of Schedule A to the By-Laws to define gross revenue for assessment purposes as income reported on the FOCUS report, with certain limited exclusions and deductions.[4] The FOCUS report reports income on a calendar year basis. However, Section 1(a) of Schedule A was not amended when this change was enacted and still gives members the election to report on either a calendar year or fiscal year basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally filed with the Commission on May 15, 1995. The NASD subsequently submitted Amendment No. 1 to the filing which amends the proposed rule to publish under Section 19(b)(2) of the Act that portion of the proposed rule change that amends Section 1 to Schedule A to the NASD By-Laws and to publish under Section 19(b)(3)(A)(ii) of the Act that portion of the proposed rule change that amends Section 2 to Schedule A of the NASD By-Laws. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated May 22, 1995. The NASD designated the part of this proposal for continuing education fees as one establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which rendered the rule effective upon the Commission's receipt of this filing.

[4] *See* Securities Exchange Act Release No. 35074 (December 9, 1994); 59 FR 64827 (December 15, 1994).

II. The Terms of Substance of the Proposed Rule Change

The NASD is amending Section 1(a) of Schedule A of the By-Laws to require all member firms to report annual gross revenue for assessment purposes on a calendar year basis. Each member is to report annual gross revenue as defined in section 5 of Schedule A, for the preceding calendar year.

III. Discussion

The Commission believes that the rule change is consistent with the provisions of Section 15(A)(b)(5) of the Act[5] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges. The rule change provides a consistent basis for assessments among member firms by requiring all firms to report annual gross revenue on a calendar year basis. In addition, the rule change rectifies the current inconsistency between Sections 1 and 5 of Schedule A of the By-Laws.

The Commission finds that the amendment will simplify the data collection and reporting process for the NASD.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–23 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17520 Filed 7–17–95; 8:45 am]

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[5] 15 U.S.C. 78*o*–3.

[Rel. No. IC–21202; File No. 812–9482]

Ameritas Life Insurance Corp., et al.

July 11, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Ameritas Life Insurance Corp. (''Ameritas''), Ameritas Life Insurance Corp. Separate Account LLVL (''Separate Account''), and Ameritas Investment Corp. (''Investment Corp.'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: The Applicants seek an order to permit them to deduct from premium payments received under certain flexible premium variable life insurance contracts (the ''Policies'') issued through the Separate Account an amount that is reasonable in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended (the ''Code''). The deduction would not be treated as sales load.

FILING DATE: The application was filed on February 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 7, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Norman M. Krivosha, Esq., Ameritas Life Insurance Corp., 5900 ''O'' Street, Lincoln, Nebraska 68510.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Division of Investment Management (Office of Insurance Products), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Ameritas, a mutual life insurance company domiciled in Nebraska since 1887, is licensed to sell insurance in 49 states, and has assets of over $2 billion.

2. In 1994, the Board of Directors of Ameritas established the Separate Account under Nebraska law. The Separate Account is registered as a unit investment trust under the 1940 Act.

3. Currently, there are eleven subaccounts within the Separate Account available to policyowners for investment. Each subaccount will invest only in the shares of a corresponding portfolio of the Vanguard Variable Insurance Fund or Neuberger & Berman Advisers Management Trust (collectively the ''Funds''). Each Fund is

registered with the SEC as an open-end diversified management investment company. The assets of the Separate Account are segregated from all other Ameritas assets, and are not chargeable with liabilities arising out of any other business which Ameritas may conduct.

4. Investment Corp. is a wholly-owned subsidiary of Ameritas and is the principal underwriter of the Policies. Investment Corp. is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

5. The Policies are issued through the Separate Account pursuant to Rule 6e–3(T) under the 1940 Act. The Policies will provide for (i) lifetime insurance coverage on the named insured up to age 100, (ii) cash value accumulation, (iii) surrender rights, and (iv) loan privileges. The Policies contain two death benefit options. Death benefit proceeds are payable to the beneficiary of Policies upon receipt by Ameritas of satisfactory proof of death. The amount of the death benefit proceeds is equal to: (i) the death benefit, plus (ii) additional life insurance proceeds provided by any riders, minus (iii) outstanding policy loans, minus (iv) any overdue monthly deduction, including the deduction for the month of death. The Policies incorporate a guaranteed death premium feature under which Policies are guaranteed not to lapse during the first three policy years, provided the specified amount of premiums is paid in advance on a monthly or yearly basis.

6. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Code by, among other things, enacting Section 848 thereof which requires that life insurance companies capitalize and amortize over a period of ten years part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income. Section 848, in effect, accelerates the realization of income from specified insurance contracts for federal income tax purposes and, therefore, the payment of taxes on the income generated by those contracts. Taking into account the time value of money, Section 848 increases the tax burden borne by the insurance company because the amount of general deductions that must be capitalized and amortized is measured by premium payments received under specified contracts, such as the Policies. In this respect, the impact of Section 848 can be compared with that of a state premium tax.

7. The Policies to which the tax burden charge (the ''DAC tax charge'') will apply fall into the category of life insurance contracts identified under Section 848 as those for which the percentage of net premiums that determines the amount of otherwise currently deductible general expenses to be capitalized and amortized is 7.7 percent.

8. The increased tax burden resulting from the applicability of Section 848 to every $10,000 of net premiums received may be quantified as follows. In the year when the premiums are received, Ameritas's general deductions are reduced by $731.50—*i.e.*, an amount equal to (a) 7.7 percent of $10,000 ($770) minus (b) one-half year's portion of the ten-year amortization ($38.50). Using a 35 percent corporate tax rate, this computes to an increase in tax for the current year of $256.03 (*i.e.*, $731.50 multiplied by .35). This increase in tax will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770—$77 in each of the following nine years, and $38.50 in the tenth year.

9. Capital which must be used by Ameritas to satisfy its increased federal tax burden under Section 848 (resulting from the receipt of premiums) is not available to Ameritas for investment. Because it seeks an after tax rate of return of 10 percent on its invested capital,[1] Ameritas submits that a discount rate of at least 10 percent is appropriate for use in calculating the present value.

10. Using a corporate tax rate of 35 percent, and assuming a discount rate of 10 percent, the present value of the tax effect of the increased deductions allowable in the following ten years comes to $160.41. Because this amount partially offsets the increased tax burden, applying Section 848 to the specified contracts imposes an increased tax burden on Ameritas equal to a present value of $95.62 (*i.e.*, $256.03 minus $160.41) for each $10,000 of net premiums.

11. Ameritas does not incur incremental income tax when it passes on state premium taxes to contract owners, because state premium taxes are deductible when computing federal income taxes. In contrast, federal income taxes are not tax-deductible when computing Ameritas's federal income taxes. Therefore, to offset fully the impact of Section 848, Ameritas must impose an additional charge that would make it whole not only for the $95.62 additional tax burden attributable to Section 848, but also for the tax on the additional $95.62 itself. This additional charge can be computed by dividing $95.62 by the complement of the 35 percent federal corporate income tax rate (*i.e.*, 65 percent), resulting in an additional charge of $147.11 for each $10,000 of net premiums, or 1.47 percent.

12. Tax deductions are of value to Ameritas only to the extent that it has sufficient gross income to fully utilize the deductions. Based upon its prior experience, Ameritas submits that it is reasonable to expect that virtually all future deductions will be fully taken.

13. Ameritas submits that a DAC tax charge of 1.00 percent of premium payments would reimburse it for the impact of Section 848 on its federal tax liabilities. Ameritas represents that a 1.00 percent charge is reasonably related to its increased tax burden under Section 848, taking into account the benefit to Ameritas of the amortization permitted by Section 848, and the use by Ameritas of a 10 percent discount rate in computing the future deduction resulting from such amortization, such rate being the equivalent of Ameritas's cost of capital.

Applicants' Legal Analysis

1. Pursuant to Section 6(c) of the 1940 Act, the SEC may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision(s) of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act, exempting them from the provisions of Section 27(c)(2) of the 1940 Act and 6e-3(T)(c)(4)(v) thereunder to the extent necessary to permit

[1] In determining its cost of capital, Ameritas considered a number of factors. Ameritas first determined a reasonable risk-free rate of return that could be expected to be earned over the long term, based on current market rates, inflation, and expected future interest rate trends. Ameritas then determined the premium it needed to earn over this risk-free rate in order to compensate for the risk profile of the insurance business. Ameritas also took into consideration any information available about the rates of return earned by other mutual life insurance companies. Ameritas represents that these factors are appropriate considerations in determining it cost of capital.

Ameritas also took into account the ratio of surplus to assets that it seeks to maintain. Ameritas represents that maintaining the ratio of surplus to assets is critical to maintaining both competitive ratings from various rating agencies and to offering competitive pricing on new and in force business. Consequently, Ameritas asserts that its surplus must grow at least at the same rate as its assets.

Applicants to deduct from premium payments received in connection with the Policies an amount that is reasonable in relation to Ameritas's increased federal tax burden created by its receipt of such premium payments. The deduction would not be treated as sales load.

3. Section 2(a)(35) of the 1940 Act defines ''sales load'' as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

4. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load.

5. Rule 6e-3(T)(b)(13)(iii), among other things, provides relief from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of certain charges other than sales load, including ''[t]he deduction of premium or other taxes imposed by any state or other governmental entity.'' Applicants represent that the requested exemption is necessary if they are to rely on certain provisions of Rule 6e-3(T)(b)(13).

6. Rule 6e-3(T)(c)(4) defines ''sales load'' during a contract period as the excess of any payments made during that period over certain specified charges and adjustments, including ''[a] deduction for and approximately equal to state premium taxes.'' Applicants submit that the proposed DAC tax charge is akin to a state premium tax charge and, therefore, should be treated as other than sales load for purposes of the 1940 Act and the rules thereunder.

7. Applicants acknowledge that the proposed DAC tax charge does not fall squarely into any of the itemized categories of charges or adjustments set forth in Rule 6e-3(T)(c)(4); a literal reading of that rule arguably does not exclude such a ''tax burden charge'' from sales load. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load. Applicants also assert that nothing in the administrative history of Rule 6e-3(T) suggests that the SEC intended to treat tax charges as sales load.

8. Applicants assert that the public policy that underlies Rule 6e-3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a tax burden charge attributable to the receipt of purchase payments as sales load would in no way further this legislative purpose because such a charge has no relation to the payment of sales commissions or other distribution expenses. Applicants further submit that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in Rule 6e-3(T)(c)(4).

9. Applicants assert that the genesis of Rule 6e-3(T)(c)(4) supports this analysis. In this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the intent of the SEC in adopting Rule 6e-3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) top flexible premium variable life insurance contracts in order, among other things, to facilitate verification by the SEC of compliance with the sales load limits set forth in Rule 6e-3(T)(b)(13)(i). Applicants submit that Rule 6e-3(T)(c)(4) does not depart, in principal, from Section 2(a)(35).

10. Applicants further assert that Section 2(a)(35) excludes from the definition of sales load under the 1940 Act deductions from premiums for ''issue taxes.'' Applicants submit that, by extension, the exclusion from ''sales load'' (as defined in Rule 6e-3(T)) of charges to cover an insurer's expenses attributable to its federal tax obligations is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act.

11. Applicants also submit that the reference in Section 2(a)(35) to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed DAC tax charge will be used to compensate Ameritas for its increased federal tax burden attributable to the receipt of premiums, and such deductions are not properly chargeable to sales or promotional activities, Applicants assert that the language of Section 2(a)(35) is another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies of the 1940 Act.

Condition for Relief

1. Applicants agree to comply with the following conditions for relief.

a. Ameritas will monitor the reasonableness of the 1.00 percent proposed DAC tax charge.

b. The registration statement for the Policies under which the 1.00 percent charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Code.

c. The registration statement for the Policies under which the 1.00 percent charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Code; (iii) the reasonableness of the targeted rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by Ameritas in determining such targeted rate of return.

Conclusion

For the reasons summarized above, Applicants represent that the requested relief from Section 27(c)(2) of the 1940 Act and Rule 6e-3(T)(c)(4)(v) thereunder is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17521 Filed 7–17–95; 8:45 am]

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[Release No. 34–35959; File No. SR–PSE–95–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Violations of the Intermarket Trading System Rules

July 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1995, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the